

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

CHARLES NEAL,

v.

DR. MICHAEL MINEV, *et al.*,

Plaintiff,

Defendants.

Case No. 2:23-cv-00902-MMD-EJY

ORDER

I. SUMMARY

Plaintiff Charles Neal brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated. (ECF No. 6.) On August 8, 2023, this Court ordered Plaintiff to file an amended complaint within 30 days. (ECF No. 5 at 10.) The Court warned Plaintiff that the action could be dismissed if he failed to file an amended complaint by that deadline. (*Id.*) That deadline expired, and Plaintiff did not file an amended complaint, move for an extension, or otherwise respond.

II. DISCUSSION

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its docket;

1 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
 2 cases on their merits; and (5) the availability of less drastic alternatives. See *In re*
 3 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
 4 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

5 The first two factors, the public's interest in expeditiously resolving this litigation
 6 and the Court's interest in managing its docket, weigh in favor of dismissal of Plaintiff's
 7 claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal
 8 because a presumption of injury arises from the occurrence of unreasonable delay in filing
 9 a pleading ordered by the court or prosecuting an action. See *Anderson v. Air West*, 542
 10 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of
 11 cases on their merits—is greatly outweighed by the factors favoring dismissal.

12 The fifth factor requires the Court to consider whether less drastic alternatives can
 13 be used to correct the party's failure that brought about the Court's need to consider
 14 dismissal. See *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining
 15 that considering less drastic alternatives *before* the party has disobeyed a court order
 16 does not satisfy this factor); *accord Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th
 17 Cir. 2002) (explaining that "the persuasive force of" earlier Ninth Circuit cases that
 18 "implicitly accepted pursuit of less drastic alternatives prior to disobedience of the court's
 19 order as satisfying this element[,] i.e., like the "initial granting of leave to amend coupled
 20 with the warning of dismissal for failure to comply[.]" have been "eroded" by *Yourish*).
 21 Courts "need not exhaust every sanction short of dismissal before finally dismissing a
 22 case, but must explore possible and meaningful alternatives." *Henderson v. Duncan*, 779
 23 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until and
 24 unless Plaintiff files an amended complaint, the only alternative is to enter a second order
 25 setting another deadline. But the reality of repeating an ignored order is that it often only
 26 delays the inevitable and squanders the Court's finite resources. The circumstances here
 27 do not indicate that this case will be an exception: there is no hint that Plaintiff needs
 28 additional time or evidence that he did not receive the Court's screening order. Setting

1 another deadline is not a meaningful alternative given these circumstances. So the fifth
2 factor favors dismissal.

3 **III. CONCLUSION**

4 Having thoroughly considered these dismissal factors, the Court finds that they
5 weigh in favor of dismissal. It is therefore ordered that this action is dismissed without
6 prejudice based on Plaintiff's failure to file an amended complaint in compliance with this
7 Court's August 8, 2023 order and for failure to state a claim.

8 The Clerk of Court is directed to enter judgment accordingly and close this case.
9 No other documents may be filed in this now-closed case. If Plaintiff wishes to pursue his
10 claims, he must file a complaint in a new case.

11 It is further ordered that Plaintiff's application to proceed *in forma pauperis* (ECF
12 No. 4) without having to prepay the full filing fee is granted. Plaintiff will not be required to
13 pay an initial installment fee. Nevertheless, the full filing fee will still be due, under 28
14 U.S.C. § 1915, as amended by the Prison Litigation Reform Act. The movant herein is
15 permitted to maintain this action to conclusion without the necessity of prepayment of fees
16 or costs or the giving of security therefor.

17 It is further ordered that, under 28 U.S.C. § 1915, as amended by the Prison
18 Litigation Reform Act, the Nevada Department of Corrections will forward payments from
19 the account of Charles Neal, #1260791 to the Clerk of Court, 20% of the preceding
20 month's deposits (in months that the account exceeds \$10.00) until the full \$350 filing fee
21 has been paid for this action. The Clerk of Court will send a copy of this order to the
22 Finance Division of the Clerk's Office and to the Chief of Inmate Services for the Nevada
23 Department of Corrections at formapauperis@doc.nv.gov.

24 It is further ordered that, even though this action is dismissed, or is otherwise
25 unsuccessful, the full filing fee will still be due, under 28 U.S.C. §1915, as amended by
26 the Prison Litigation Reform Act.

27 It is further ordered that this Court certifies that any *in forma pauperis* appeal from
28 this order would not be taken "in good faith" under 28 U.S.C. § 1915(a)(3).

1 DATED THIS 18th Day of September 2023.
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MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE